



Litigation Update

Litigation Section News

March 2004

In Personam Jurisdiction: On January 14, the California Supreme Court denied review in *Archdiocese of Milwaukee v. Sup. Ct.*, filed October 1, 2003 (DJDAR 11117 – Oct. 3), 4DCA3, which held that the archdiocese was subject to the jurisdiction of the California courts by virtue of having arranged to have a pedophile priest transferred to this state. The court found that this act, provided a sufficient basis for specific jurisdiction because the archdiocese had "purposefully availed [itself] of forum benefits. [Also see *Pavlovich v. Sup. Ct.* (2002) 29 Cal.4th 262, 446-447; *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462.]

Right to Oral Argument: Division 1 of the 4th District has now concurred with the opinion of Division 3 of that district in holding that parties have a right to oral argument on motions for summary judgment. *Brannon v. Sup. Ct. (Crippen)* (4DCA1, 1/13/04) 2004 DJDAR 374.) The court concurred in the decision in *Mediterranean Construction Co. v. State Farm Fire & Casualty Co.* (1998) 66 CA4th 257 which reached the same conclusion. In *Brannon*, the court reversed its own earlier dictum that there was no right to oral argument in *Sweat v. Hollister* (1995) 37 CA4th 603. In *Crippen* and the earlier cases, the court made it clear that although the court could not rule on the motion without affording the parties an opportunity for oral argument, the court retained the power to impose reasonable limitations on oral argument.

Legal Malpractice: Even though a lawyer advises the client of a malpractice (here blowing the statute of limitations), the statute of limitations of the malpractice action against the lawyer does not start to run as the lawyer assures the client she or he is attempting to remedy the problem. *Gold v. Weissman* (2DCA8, 1/12/04) 2004 DJDAR 341.

CCP §998 Settlement Offers: Beware of traps in making a CCP §998 settlement offer to more than one party. *Vic v. DaCorsi* (2003) 110 CA4th 206, the court held that a §998 offer was valid even though it had not been apportioned between two plaintiffs because each plaintiff had an equal, undivided half-interest in the lawsuit. But a joint 998 offer made to a husband and wife was held invalid where they asserted independent cause of action. *Weinberg v. Safeco Ins. Co.* (2DCA7, 1/7/04) 2004 DJDAR 229.

Anti-SLAPP Alert: New CCP §425.17, effective January 4, 2004, will essentially exempt commercial litigation from the anti-SLAPP statute (CCP §425.16). In attempting to accomplish this, the legislature has created an extremely complicated statutory scheme with a set of exemptions from the statute together with exceptions to the exemptions. If you are making or defending anti-SLAPP motions, it is essential you familiarize yourself with the new statute. Important questions remain unanswered: Does the new statute apply to cases filed before January 1, 2004? If not, does the statute apply to motions filed before January 1, 2004, that will be decided after that date?

Statutes v. Fast Track Rules: Division 3 of the 4th District has stated that when state rules conflict with statutes, it is the state rule that must give way in *Polibrid v. Sup. Ct. (SSC Construction)* (Modified Oct. 21, 2003) 112 Cal. App. 4th 920; 2003 Cal. App. LEXIS 1575 (4DCA3). The court found that the fast track rules must give way to the statutory right to bring a summary judgment motion. When state rules conflict with statutes, it is the state rule that must give way. Holding that the state fast track rule, by its terms, is merely a "goal" and courts are only directed that they "should" process all cases within two years of filing. The court

made it clear that even under current rules courts retain the power to exempt a general civil case from time disposition goals if it involves exceptional circumstances that prevent the court and parties from meeting those goals.

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